

ODP-81-552
1 May 1981

OGC HAS REVIEWED

25X1 MEMORANDUM FOR: [REDACTED]
Office of General Counsel

25X1 FROM : [REDACTED]
Chief, Management Staff, ODP

SUBJECT : Draft Opinion for Comments:
Analysis of the Paperwork Reduction
Act of 1980

REFERENCE : a. Your Memo, dtd. 14 April 1981,
Same Subject, (OGC 81-03102)
b. Memo from IHSA to You, Subject:
Comments Regarding Analysis of the
Paperwork Reduction Act of 1980, dtd.
22 April 1981 (DDA 81-0849)

1. You asked for comments on the draft memorandum prepared for the General Counsel's signature that was attached to your memorandum, reference a. Comments on the draft opinion from senior managers of the Office of Data Processing are included in the following paragraphs. In paragraph 4 (and 5) we offer a suggestion and in paragraph 6 we ask for an opinion.

2. In Section IV, entitled Designation of Senior Agency Official for Compliance, of your draft memorandum from the General Counsel, it was noted that Subsection (b) of Section 3506 of the Act required the head of each Agency to designate a senior official to carry out the Agency's responsibilities under the Act. Further, Subsection (c)(4) of Section 3506 requires the official so designated be assigned the responsibility for acquisitions made under the delegation of authority under Section 111 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 759, known as the Brooks Act. Thus Subsection (b) and (c)(4) of Section 3506 dictate the management of information handling within each Agency, including the management and acquisition of automatic data processing equipment (ADPE).

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3. Section III, entitled Automatic Data Processing Equipment, of the draft memorandum from the General Counsel, indicated that Section 3502(2) of the Act excluded from the provisions of the Act ADP systems or equipment, the function, operation or use of which involves activities related to the collection of information concerning activities such as foreign intelligence, counterintelligence, covert action, and security activities. Section III of draft memorandum from the General Counsel stated that substantially all of the Agency's ADPE would fit within the exemption created by Section 3505(2). Given the broader language of Section 3502 this exemption clearly applies to data processing systems or equipment, not just ADPE.

4. The Office of Data Processing suggests that since substantially all of the Agency's ADP systems or equipment would be exempt from the Act, thus, by inference, the procurement and management of those systems or that equipment would also be exempt from the Act and, hence, Subsection (c)(4) of Section 3506 would not apply. That is to say that the senior official designated under Section 3506(b) would not necessarily have to be the person assigned the delegation of procurement authority.

5. The thrust of paragraph 4 above is to support the position taken by the Information Handling Systems Architect (IHSA) in reference b., to the effect that assignment of one office or individual to perform both procurement and information handling systems architecture management is ill-advised from this Agency's management standpoint. The suggestion in paragraph 4 above is an alternative to the IHSA's suggestion and provides rationale for the assignment of managerial responsibilities to more than one office or individual.

6. We would like your opinion on another aspect of the Act. Section 3504 describes the "Authority and function of the Director" (of OMB). An additional implication of the exemption for "intelligence" ADPE, it may be argued, is an exemption from many of the authorities of the OMB Director as described in this section. For example, Section 3504(g) outlines the Federal automatic data processing and telecommunications functions of the Director. These include, "developing and implementing policies, standards, and guidelines." Based on the "intelligence" ADPE exemption, it is reasonable to ask if this Agency must follow "policies, principles, standards and guidelines" promulgated by the Director. Since OMB issuances in this area may have great impact upon the Agency, we believe that clarification of our responsibilities vis-a-vis this section may be quite significant. We therefore request specific OGC guidance as to whether we are exempt from OMB authorities that derive from this

chapter; i.e., those authorities concerned with the management and use of ADPE as well as those concerned with information systems that stored and processed on ADPE employed for intelligence purposes.

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cc: D/OL
IHSA



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